

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DYSON TECHNOLOGY LIMITED	)	
and DYSON, INC.,	)	
	)	
Plaintiffs,	)	
v.	)	Civil Action No. 05-434 GMS
	)	
MAYTAG CORPORATION,	)	Exhibits A-D, F-N,
	)	P-S, and X-Y
Defendant.	)	Filed Under Seal

**AFFIDAVIT OF JOSH GOLDBERG IN SUPPORT OF DEFENDANT  
MAYTAG CORPORATION'S REPLY FOR LEAVE TO FILE A SECOND AMENDED  
ANSWER, AFFIRMATIVE DEFENSES AND SUPPLEMENTAL COUNTERCLAIMS**

I, JOSH GOLDBERG, being duly sworn, hereby depose and say:

1. I am an attorney for Maytag Corporation ("Maytag"), Defendant/Counter-Plaintiff in the above matter. I have personal knowledge of the facts set forth in this affidavit, which is filed in support of Maytag's Motion for a Leave to File a Second Amended Answer, Affirmative Defenses and Supplemental Counterclaims.

2. Attached hereto as Exhibit A is a true and correct copy of Dyson, Inc.'s July 22, 2005 letter to the U.S. National Advertising Division, Bates labeled DYS012021-DYS012052 at DYS012021, stating "We represent Dyson, Inc., *the distributor and marketer of the Dyson vacuum cleaners ... in the United States.*" (emphasis added)

3. Attached hereto as Exhibit B is a true and correct copy of July 8, 2005 Dyson Limited Network Clearance Forms to various U.S. cable television networks, stating, "Enclosed for your review, please find scripts and substantiation" for the Dyson commercial being submitted: DYS302620 (MTV Networks); DYS302622 (Lifetime); DYS302623 (WB Network); DYS302624 (SoapNet); DYS302625 (ABC Family); DYS302626 (FOX); DYS302627 (CBS); DYS302628 (Nickelodeon); DYS302629 (Hallmark Channel); DYS302633 (A & E); DYS302634 (HGTV/Food Network); DYS302635 (Oxygen Network); DYS02636 (E! Style

Network); DYS302641 (USA Networks); DYS302643 (Turner Broadcasting (TNT, TBS, CNN)); DYS302644 (NBC); DYS302646 (ESPN) .

4. Attached hereto as Exhibit C is a true and correct copy of the July 8, 2005 script for Dyson's "Monitor" commercial and purported substantiation submitted to various television networks with the above Network Clearance Forms, Bates labeled DYS302647-DYS302651.

5. Attached hereto as Exhibit D is a true and correct copy of Dyson television commercial ad time purchases by MediaCom, Dyson's U.S. media buyer, Bates labeled MCW00532-MCW00540, MWC00629-MCW00632, MCW00711-716, and MCW00811-MCW00820.

6. Attached hereto as Exhibit E is a true and correct copy of a web page for Comcast Corp. listing the various local and national cable television networks that broadcast in New Castle County, Delaware.  
(<http://www.comcast.com/customers/clu/ChannelLineup.ashx?print=1&CGID=2136>)

7. Attached hereto as Exhibit F is a true and correct copy of Dyson purchases of television commercial ad time on various U.S. national cable stations, Bates labeled MCW00006-02 and MCW00208-09.

8. Attached hereto as Exhibit G is a true and correct copy of Dyson purchases of ad space in various U.S. print publications, Bates labeled MCW00462-MCW00466.

9. Attached hereto as Exhibit H is a true and correct copy of May 2004 email string between Dyson UK employee Emma Jane Heatley, Dyson, Inc. former President Doug Kellam and former Dyson UK Global Marketing Director Rebecca Trentham, Bates labeled DYS034225-DYS034228 at 225-6.

10. Attached hereto as Exhibit I is a true and correct copy of the November 14, 2006 deposition of Dyson UK Marketing Director Clare Mullin at 174:1-4, 177:13-16.

11. Attached hereto as Exhibit J is a true and correct copy of the November 30, 2006 deposition of Dyson, Inc. Vice President Maria Trian at 60-65.

12. Attached hereto as Exhibit K is a true and correct copy Dyson UK CEO Martin McCourt's December 2004 Chief Executive Officer Summary, Bates labeled DYS044058-DYS044059 at DYS044058, bullet point 5.

13. Attached hereto as Exhibit L is a true and correct copy of Dyson, Inc.'s 2004 annualized Profits and Losses Statement, Bates labeled DYS515406-DYS515429, at DYS515408.

14. Attached hereto as Exhibit M is a true and correct copy of excerpts from the December 18, 2006 expert report of LECG, LLC Director Dr. Mohan Rao ¶¶ 97-8.

15. Attached hereto as Exhibit N is a true and correct copy of Dyson, Inc.'s 2005 annualized Profits and Losses Statement, Bates labeled DYS515661-DYS515686, at DYS515664.

16. Attached hereto as Exhibit O is a true and correct copy of *Mylan Pharmaceuticals, Inc. v. Kremers Urban Dev.*, C.A. No. 02-1628-GMS, 2003 U.S. LEXIS 20665 (D. Del. November 14, 2003).

17. Attached hereto as Exhibit P is a true and correct copy of the November 2, 2006 deposition of Dyson UK CEO Martin McCourt at 146:25-148:18.

18. Attached hereto as Exhibit Q is a true and correct copy of the November 13, 2006 deposition of Dyson UK senior test technician Christopher Perrin Dep. at 2 and November 10, 2006 deposition of Dyson UK product performance manager James Widdowson Dep. at 2.

19. Attached hereto as Exhibit R is a true and correct copy of a June 28, 2005 email and attachment from Dyson Marketing Communications Manager Carol Errington, Bates labeled DYS034084-DYS034085.

20. Of the thirteen current Dyson employees that Dyson has produced to date for deposition, eight are Dyson UK employees. Dyson also has offered Dyson UK employee Matthew Kitchin, but that deposition has not occurred yet.

21. Attached hereto as Exhibit S is a true and correct copy of the February 24, 2006 discovery correspondence from Dyson counsel to Maytag counsel.

22. Attached hereto as Exhibit T is a true and correct copy of *Fingles v. Goklany*, No. 92-1080, 1992 U.S. Dist. LEXIS 19209 (E.D. Pa. Dec. 11, 1992).

23. Attached hereto as Exhibit U is a true and correct copy of *Strategic Staffing Group, Inc. v. Harris Friedell*, No. 06-CV-1398, 2006 U.S. Dist. LEXIS 66106, at \*11 (E.D. Pa. September 14, 2006).

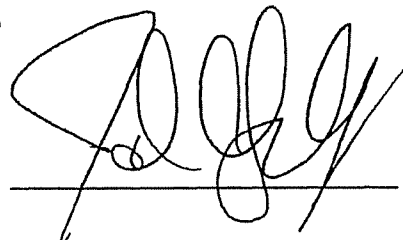
24. Attached hereto as Exhibit V is a true and correct copy of *Electro Medical Equip. Ltd. v. Hamilton Medical AGE*, No. CIV A 99-579, 1999 WL 1073636, at \* 6 (E.D. Pa. Nov. 16, 1999).

25. Attached hereto as Exhibit W is a true and correct copy of *Directory Dividends, Inc. v. SBC Communications, Inc.*, No. 01-CV-1974, 2003 U.S. Dist. LEXIS 12214, at \*10 (E.D. Pa. July 2, 2003).

26. Attached hereto as Exhibit X is a true and correct copy of various Dyson advertising containing the advertising claims at issue in this litigation along with the prominent image and signature of James Dyson, Bates labeled DYS010199, DYS010210, and MAY000403.

27. Attached hereto as Exhibit Y is a true and correct copy of the November 8, 2006 deposition of James Dyson at 312:2-317:4.

FURTHER AFFIANT SAYETH NAUGHT

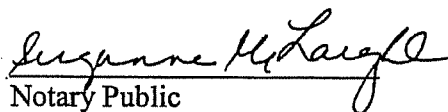
A handwritten signature in black ink, appearing to read "Sayeth Naught", is written over a horizontal line.

Josh Goldberg

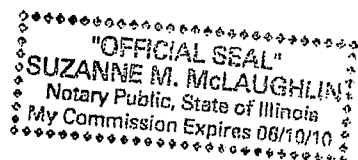
County of Cook

State of Illinois

Sworn to and subscribed in my presence this 20<sup>th</sup> day of December, 2006

  
Notary Public

SEAL



**CERTIFICATE OF SERVICE**

I, Francis DiGiovanni, hereby certify that on December 20, 2006, copies of the foregoing document were served on the following counsel of record in the manner indicated:

**BY HAND DELIVERY AND E-MAIL:**

C. Barr Flinn  
John W. Shaw  
Adam Poff  
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/s/ Francis DiGiovanni  
Francis DiGiovanni (#3189)